### 1NC

### Off

Targeted killings are strikes carried about against pre-meditated, individually designated targets---signature strikes are distinct

Kenneth Anderson 11, Professor at Washington College of Law, American University, Hoover Institution visiting fellow, Non-Resident Visiting Fellow at Brookings, “Distinguishing High Value Targeted Killing and ‘Signature’ Attacks on Taliban Fighters,” August 29 2011, http://www.volokh.com/2011/08/29/distinguishing-high-value-targeted-killing-and-signature-attacks-on-taliban-fighters/

From the US standpoint, it is partly that it does not depend as much as it did on Pakistan’s intelligence. But it is also partly, as a couple of well-publicized incidents a few months ago made clear, that sharing targeting decisions with Pakistan’s military and ISI runs a very considerable possibility of having the targets tipped off (as even The Onion has observed). The article notes in this regard, the U.S. worries that “if they tell the Pakistanis that a drone strike is coming someone within Pakistani intelligence could tip off the intended target.” However, the Journal’s reporting goes from there to emphasize an aspect of targeted killing and drone warfare that is not sufficiently appreciated in public discussions trying to assess such issues as civilian collateral damage, strategic value and uses, and the uses of drones in counterterrorism and counterinsurgency as distinct activities. The article explains:¶ The CIA carries out two different types of drone strikes in the tribal areas of Pakistan—those against so-called high-value targets, including Mr. Rahman, and “signature” strikes targeting Taliban foot-soldiers who criss-cross the border with Afghanistan to fight U.S. forces there.¶ High-value targets are added to a classified list that the CIA maintains and updates. The agency often doesn’t know the names of the signature targets, but it tracks their movements and activities for hours or days before striking them, U.S. officials say.¶ Another way to put this is that, loosely speaking, the high value targets are part of a counterterrorism campaign – a worldwide one, reaching these days to Yemen and other places. It is targeted killing in its strict sense using drones – aimed at a distinct individual who has been identified by intelligence. The “signature” strikes, by contrast, are not strictly speaking “targeted killing,” because they are aimed at larger numbers of fighters who are targeted on the basis of being combatants, but not on the basis of individuated intelligence. They are fighting formations, being targeted on a mass basis as part of the counterinsurgency campaign in Afghanistan, as part of the basic CI doctrine of closing down cross-border safe havens and border interdiction of fighters. Both of these functions can be, and are, carried out by drones – though each strategic function could be carried out by other means, such as SEAL 6 or CIA human teams, in the case of targeted killing, or manned aircraft in the case of attacks on Taliban formations. The fundamental point is that they serve distinct strategic purposes. Targeted killing is not synonymous with drone warfare, just as counterterrorism is analytically distinct from counterinsurgency. (I discuss this in the opening sections of this draft chapter on SSRN.)¶ This analytic point affects how one sees the levels of drone attacks going up or down over the years. Neither the total numbers of fighters killed nor the total number of drone strikes – going up or down over months – tells the whole story. Total numbers do not distinguish between the high value targets, being targeted as part of the top down dismantling of Al Qaeda as a transnational terrorist organization, on the one hand, and ordinary Taliban being killed in much larger numbers as part of counterinsurgency activities essentially part of the ground war in Afghanistan, on the other. Yet the distinction is crucial insofar as the two activities are, at the level of truly grand strategy, in support of each other – the war in Afghanistan and the global counterterrorism war both in support of the AUMF and US national security broadly – but at the level of ordinary strategic concerns, quite distinct in their requirements and conduct. If targeted killing against AQ leadership goes well in Pakistan, those might diminish at some point in the future; what happens in the war against the Afghan Taliban is distinct and has its own rhythm, and in that effort, drones are simply another form of air weapon, an alternative to manned aircraft in an overt, conventional war. Rising or falling numbers of drone strikes in the aggregate will not tell one very much without knowing what mission is at issue.

Vote neg --- signature strikes and targeted killings are distinct operations with entirely separate lit bases and advantages---they kill precision and limits

Kenneth Anderson 11, Professor at Washington College of Law, American University, Hoover Institution visiting fellow, Non-Resident Visiting Fellow at Brookings, “Efficiency in Bello and ad Bellum: Targeted Killing Through Drone Warfare,” Sept 23 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1812124

Although targeted killing and drone warfare are often closely connected, they are not the same and are not always associated with each other. We need to disaggregate the practices of targeted killing from the technologies of drone warfare.¶ Targeted killing consists of using deadly force, characterized by the identification of and then strike against an individual marked to be killed. It is distinguished, among other things, by making an individualized determination of a person to be killed, rather than simply identifying, for example, a mass of enemy combatants to attack as a whole. Since it is a practice that involves the determination of an identified person, rather than a mass of armed and obvious combatants, it is a use of force that is by its function integrated with intelligence work, whether the intelligence actors involved are uniformed military or a civilian agency such as the CIA.¶ Targeted killing might (and does) take place in the course of conventional warfare, through special operations or other mechanisms that narrowly focus operations through intelligence. But it might also take place outside of a conventional conflict, or perhaps far from the conventional battlefields of that conflict, sufficiently so operationally to best be understood as its own operational category of the use of force – “intelligence-driven,” often covert, and sometimes non-military intelligence agency use of force, typically aimed at “high value” targets in global counterterrorism operations. It might be covert or it might not – but it will be driven by intelligence, because of necessity it must identify and justify the choice of target (on operational, because resources are limited; or legal grounds; or, in practice, both).¶ Targeted killing might use a variety of tactical methods by which to carry out the attack. The method might be by drones firing missiles – the focus of discussion here. But targeted killing – assassination, generically – is a very old method for using force and drones are new. Targeted killing in current military and CIA doctrine might, and often does, take place with covert civilian intelligence agents or military special operations forces – a human team carrying out the attack, rather than a drone aircraft operated from a distance. The Bin Laden raid exemplifies the human team-conducted targeted killing, of course, and in today’s tactical environment, the US often uses combined operations that have available both human teams and drones, to be deployed according to circumstances.¶ Targeted killing is thus a tactic that might be carried out either by drones or human teams. If there are two ways to do targeted killing, there are also two functions for the use of drones – targeted killing as part of an “intelligence-driven” discrete use of force, on the one hand, and a role (really, roles) in conventional warfare. Drones have a role in an ever-increasing range of military operations that have no connection to “targeted killing.” For many reasons ranging from cost-effectiveness to mission-effectiveness, drones are becoming more ramified in their uses in military operations, and will certainly become more so. This is true starting with their fundamental use in surveillance, but is also true when used as weapons platforms.¶ From the standpoint of conventional military operations and ordinary battlefields, drones are seen by the military as simply an alternative air weapons platform. One might use an over-the-horizon manned aircraft – or, depending on circumstances, one might instead use a drone as the weapons platform. It might be a missile launched from a drone by an operator, whether sitting in a vehicle near the fighting or farther away; it might be a weapon fired from a helicopter twenty miles away, but invisible to the fighters; it might be a missile fired from a US Navy vessel hundreds of miles away by personnel sitting at a console deep inside the ship. Future air-to-air fighter aircraft systems are very likely to be remotely piloted, in order to take advantage of superior maneuverability and greater stresses endurable without a human pilot. Remotely-piloted aircraft are the future of much military and, for that matter, civil aviation; this is a technological revolution that is taking place for reasons having less to do with military aviation than general changes in aviation technology.¶ Missiles fired from a remotely-piloted standoff platform present the same legal issues as any other weapons system – the law of war categories of necessity and proportionality in targeting. To military professionals, therefore, the emphasis placed on “remoteness” from violence of drone weapons operators, and presumed psychological differences in operators versus pilots, is misplaced and indeed mystifying. Navy personnel firing missiles from ships are typically just as remote from the fighting, and yet one does not hear complaints about their indifference to violence and their “Playstation,” push-button approach to war. Air Force pilots more often than not fire from remote aircraft; pilots involved in the bombing campaign over Serbia in the Kosovo war sometimes flew in bombers taking off from the United States; bomber crews dropped their loads from high altitudes, guided by computer, with little connection to the “battlefield” and little conception of what they – what their targeting computers - were aiming at. Some of the crews in interviews described spending the flights of many hours at a time, flying from the Midwest and back, as a good chance to study for graduate school classes they were taking – not Playstation, but study hall. In many respects, the development of new sensor technologies make the pilots, targeters, and the now-extensive staff involved in a decision to fire a weapon from a drone far more aware of what is taking place at the target than other forms of remote targeting, from Navy ships or high altitude bombing.¶ Very few of the actors on a technologically advanced battlefield are personally present in a way that makes the destruction and killing truly personal – and that is part of the point. Fighting up close and personal, on the critics’ psychological theories, seems to mean that it has greater significance to the actors and therefore leads to greater restraint. That is extremely unlikely and contrary to the experience of US warfighters. Lawful kinetic violence is more likely to increase when force protection is an issue, and overuse of force is more likely to increase when forces are under personal pressure and risk. The US military has known since Vietnam at least that increased safety for fighting personnel allows them greater latitude in using force, encourages and permits greater willingness to consider the least damaging alternatives, and that putting violence at a remove reduces the passions and fears of war and allows a coolly professional consideration of what kinds, and how much, violence is required to accomplish a lawful military mission. Remote weapon systems, whether robotic or simply missiles launched from a safe distance, in US doctrine are more than just a means for reducing risk to forces – they are an integral part of the means of allowing more time to consider less-harmful alternatives.¶ This is an important point, given that drones today are being used for tasks that involve much greater uses of force than individualized targeted killing. Drones are used today, and with increasing frequency, to kill whole masses of enemy columns of Taliban fighters on the Pakistan border – in a way that would otherwise be carried out by manned attack aircraft. This is not targeted killing; this is conventional war operations. It is most easily framed in terms of the abstract strategic division of counterinsurgency from counterterrorism (though in practice the two are not so distinct as all that). In particular, drones are being deployed in the AfPak conflict as a counterinsurgency means of going after Taliban in their safe haven camps on the Pakistan side of the border. A fundamental tenet of counterinsurgency is that the safe havens have to be ended, and this has meant targeting much larger contingents of Taliban fighters than previously understood in the “targeted killing” deployment. This could be – and in some circumstances today is – being done by the military; it is also done by the CIA under orders of the President partly because of purely political concerns; much of it today seems to be a combined operation of military and CIA.¶ Whoever conducts it and whatever legal issues it might raise, the point is that this activity is fundamentally counterinsurgency. The fighters are targeted in much larger numbers in the camps than would be the case in “targeted killing,” and this is a good instance of how targeted killing and drone warfare need to be differentiated. The targets are not individuated, either in the act of targeting or in the decision of who and where to target: this is simply an alternative air platform for doing what might otherwise be done with helicopters, fixed wing aircraft, or ground attack, in the course of conventional counterinsurgency operations. But it also means that the numbers killed in such operations are much larger, and consist often of ordinary fighters who would otherwise pile into trucks and cross back into Afghanistan, rather than individualized “high value” targets, whether Taliban or Al Qaeda.

### Off

The 1AC is an object that speaks for ITSELF - voting for the affirmative is NOT voting for the 1ac, vote negative on presumption.

Bryant 12 - Professor of Philosophy at Collin College (Levi R., Author of a number of articles on Deleuze, Badiou, Zizek, Lacan, and political theory, July 24th, 2012, http://larvalsubjects.wordpress.com/2012/07/24/radical-ethnography-or-situated-knowledge-a-response-to-a-friend/)

Your tone here sounds a bit irritated. I hope I didn’t provoke that as it wasn’t my intention. I don’t think I understood your point, but genuinely disagree with you. While I readily acknowledge that the cave painters were the cause of the paintings, I strongly disagree that the painters are a part of the being of the painting. Just as ones parents are the cause of one’s being while nonetheless the child is an autonomous being, the painting is an autonomous beings that have its own power that exceed any particular cultural or historical context. I don’t disagree that the question of what the paintings were for the cave painters is an interesting and important one, but in raising that question we’ve entered into a new machinic relation and are no longer talking about the paintings for themselves as autonomous entities that circulate throughout the world beyond their origins. What they were for a particular group is an important issue. My only point is that no work can ever be reduced– nor any entity, for that matter –can be reduced to what it is for another entity.

The artist is dead - attempting to couple the speech act of the 1ac with the affirmative empties the world of all meaning and makes life dull and tame.

Sontag 66 (Susan, Against Interpretation, http://www.uiowa.edu/~c08g001d/Sontag\_AgainstInterp.pdf)

The fact is, all Western consciousness of and reflection upon art have remained within the confines staked out by the Greek theory of art as mimesis or representation. It is through this theory that art as such - above and beyond given works of art - becomes problematic, in need of defense. And it is the defense of art which gives birth to the odd vision by which something we have learned to call "form"is separated off from something we have learned to call "content," and to the well-intentioned move which makes content essential and form accessory. Even in modern times, when most artists and critics have discarded the theory of art as representation of an outer reality in favor of the theory of art as subjective expression, the main feature of the mimetic theory persists. Whether we conceive of the work of art on the model of a picture (art as a picture of reality) or on the model of a statement (art as the statement of the artist), content still comes first. The content may have changed. It may now be less figurative, less lucidly realistic. But it is still assumed that a work of art is its content. Or, as it's usually put today, that a work of art by definition says something. ("What X is saying is . . . ," "What X is trying to say is . . . ," "What X said is . . ." etc., etc.) 2 None of us can ever retrieve that innocence before all theory when art knew no need to justify itself, when one did not ask of a work of art what it said because one knew (or thought one knew) what it did. From now to the end of consciousness, we are stuck with the task of defending art. We can only quarrel with one or another means of defense. Indeed, we have an obligation to overthrow any means of defending and justifying art which becomes particularly obtuse or onerous or insensitive to contemporary needs and practice. This is the case, today, with the very idea of content itself. Whatever it may have been in the past, the idea of content is today mainly a hindrance, a nuisance, a subtle or not so subtle philistinism. Though the actual developments in many arts may seem to be leading us away from the idea that a work of art is primarily its content, the idea still exerts an extraordinary hegemony. I want to suggest that this is because the idea is now perpetuated in the guise of a certain way of encountering works of art thoroughly ingrained among most people who take any of the arts seriously. What the overemphasis on the idea of content entails is the perennial, never consummated project of interpretation. And, conversely, it is the habit of approaching works of art in order to interpret them that sustains the fancy that there really is such a thing as the content of a work of art. 3 Of course, I don't mean interpretation in the broadest sense, the sense in which Nietzsche (rightly) says, "There are no facts, only interpretations." By interpretation, I mean here a conscious act of the mind which illustrates a certain code, certain "rules" of interpretation. Directed to art, interpretation means plucking a set of elements (the X, the Y, the Z, and so forth) from the whole work. The task of interpretation is virtually one of translation. The interpreter says, Look, don't you see that X is really - or, really means - A? That Y is really B? That Z is really C? What situation could prompt this curious project for transforming a text? History gives us the materials for an answer. Interpretation first appears in the culture of late classical antiquity, when the power and credibility of myth had been broken by the "realistic" view of the world introduced by scientific enlightenment. Once the question that haunts post-mythic consciousness - that of the seemliness of religious symbols - had been asked, the ancient texts were, in their pristine form, no longer acceptable. Then interpretation was summoned, to reconcile the ancient texts to "modern" demands. Thus, the Stoics, to accord with their view that the gods had to be moral, allegorized away the rude features of Zeus and his boisterous clan in Homer's epics. What Homer really designated by the adultery of Zeus with Leto, they explained, was the union between power and wisdom. In the same vein, Philo of Alexandria interpretedthe literal historical narratives of the Hebrew Bible as spiritual paradigms. The story of the exodus from Egypt, the wandering in the desert for forty years, and the entry into the promised land, said Philo, was really an allegory of the individual soul's emancipation, tribulations, and final deliverance. Interpretation thus presupposes a discrepancy between the clear meaning of the text and the demands of (later) readers. It seeks to resolve that discrepancy. The situation is that for some reason a text has become unacceptable; yet it cannot be discarded. Interpretation is a radical strategy for conserving an old text, which is thought too precious to repudiate, by revamping it. The interpreter, without actually erasing or rewriting the text, is altering it. But he can't admit to doing this. He claims to be only making it intelligible, by disclosing its true meaning. However far the interpreters alter the text (another notorious example is the Rabbinic and Christian "spiritual" interpretations of the clearly erotic Song of Songs), they must claim to be reading off a sense that is already there. Interpretation in our own time, however, is even more complex. For the contemporary zeal for the project of interpretation is often prompted not by piety toward the troublesome text (which may conceal an aggression), but by an open aggressiveness, an overt contempt for appearances. The old style of interpretation was insistent, but respectful; it erected another meaning on top of the literal one. The modern style of interpretation excavates, and as it excavates, destroys; it digs "behind" the text, to find a sub-text which is the true one. The most celebrated and influential modern doctrines, those of Marx and Freud, actually amount to elaborate systems of hermeneutics, aggressive and impious theories of interpretation. All observable phenomena are bracketed, in Freud's phrase, as manifest content. This manifest content must be probed and pushed aside to find the true meaning - the latent content - beneath. For Marx, social events like revolutions and wars; for Freud, the events of individual lives (like neurotic symptoms and slips of the tongue) as well as texts (like a dream or a work of art) - all are treated as occasions for interpretation. According to Marx and Freud, these events only seem to be intelligible. Actually, they have no meaning without interpretation. To understand is to interpret. And to interpret is to restate the phenomenon, in effect to find an equivalent for it. Thus, interpretation is not (as most people assume) an absolute value, a gesture of mind situated in some timeless realm of capabilities. Interpretation must itself be evaluated, within a historical view of human consciousness. In some cultural contexts, interpretation is a liberating act. It is a means of revising, of transvaluing, of escaping the dead past. In other cultural contexts, it is reactionary, impertinent, cowardly, stifling. 4 Today is such a time, when the project of interpretation is largely reactionary, stifling. Like the fumes of the automobile and of heavy industry which befoul the urban atmosphere, the effusion of interpretations of art today poisons our sensibilities. In a culture whose already classical dilemma is the hypertrophy of the intellect at the expense of energy and sensual capability, interpretation is the revenge of the intellect upon art. Even more. It is the revenge of the intellect upon the world. To interpret is to impoverish, to deplete the world - in order to set up a shadow world of "meanings." It is to turn the world into this world. ("This world"! As if there were any other.)The world, our world, is depleted, impoverished enough. Away with all duplicates of it, until we again experience more immediately what we have.

### Off

The aff is a bad joke, with the most seriously face they scream "Targeted killing is slowly but surely turning us into a police state" as if this hasn't characterized this god-forsaken country for the past 300 years - as if this country wasn't already built off of a platform of anti-blackness, as if merely extending the category of the human enlightenment subject is sufficient to pave over centuries of exploitation . Wake up.

Rodriguez ’11 [Dylan, PhD in Ethnic Studies Program of the University of California Berkeley and Associate Professor of Ethnic Studies at University of California Riverside, “The Black Presidential Non-Slave: Genocide and the Present Tense of Racial Slavery”, Political Power and Social Theory Vol. 22, pp. 38-43]

To crystallize what I hope to be the potentially useful implications of this provocation toward a retelling of the slavery-abolition story: if we follow the narrative and theoretical trajectories initiated here, it should take little stretch of the historical imagination, nor a radical distension of analytical framing, to suggest that the singular institutionalization of racist and peculiarly antiblack social/state violence in our living era - the US imprisonment regime and its conjoined policing and criminalization apparatuses - elaborates the social logics of genocidal racial slavery within the American nation-building project, especially in the age of Obama. The formation and astronomical growth of the prison industrial complex has become a commonly identified institutional marker of massively scaled racist state mobilization, and the fundamental violence of this apparatus is in the prison's translation of the 13th Amendment's racist animus. By "reforming" slavery and anti-slave violence, and directly transcribing both into criminal justice rituals, proceedings, and punishments, the 13th Amendment permanently inscribes slavery on "post-emancipation" US statecraft. The state remains a "slave state" to the extent that it erects an array of institutional apparatuses that are specifically conceived to reproduce or enhance the state's capacity to "create" (i.e., criminalize and convict) prison chattel and politically legitimate the processes of enslavement/imprisonment therein. The crucial starting point for our narrative purposes is that the emergence of the criminalization and carceral apparatus over the last forty years has not, and in the foreseeable future will not build its institutional protocols around the imprisonment of an economically productive or profitmaking prison labor force (Gilmore, 1999).16 So, if not for use as labor under the 13th Amendment's juridical mandate of "involuntary servitude," what is the animating structural-historical logic behind the formation of an imprisonment regime unprecedented in human history in scale and complexity, and which locks up well over a million Black people, significantly advancing numbers of "nonwhite" Latinos as, and in which the white population is vastly underrepresented in terms of both numbers imprisoned and likelihood to be prosecuted (and thus incarcerated) for similar alleged criminal offenses?17 In excess of its political economic, geographic, and juridical registers, the contemporary US prison regime must be centrally understood as constituting an epoch-defining statecraft of race: a historically specific conceptualization, planning, and institutional mobilization of state institutional capacities and state-influenced cultural structures to reproduce and/or reassemble the social relations of power, dominance, and violence that constitute the ontology (epistemic and conceptual framings) of racial meaning itself (da Silva, 2007; Goldberg, 1993). In this case, the racial ontology of the postslavery and post-civil rights prison is anchored in the crisis of social meaning wrought on white civil society by the 13th Amendment's apparent juridical elimination of the Black chattel slave being. Across historical periods, the social inhabitation of the white civil subject - - its self-recognition, institutionally affirmed (racial) sovereignty, and everyday social intercourse with other racial beings - is made legible through its positioning as the administrative authority and consenting audience for the nation- and civilization-building processes of multiple racial genocides. It is the bare fact of the white subject's access and entitlement to the generalized position of administering and consenting to racial genocide that matters most centrally here. Importantly, this white civil subject thrives on the assumption that s/he is not, and will never be the target of racial genocide.18 (Williams, 2010) .Those things obtained and secured through genocidal processes - land, political and military hegemony/dominance, expropriated labor - are in this sense secondary to the raw relation of violence that the white subject inhabits in relation to the racial objects (including people, ecologies, cultural forms, sacred materials, and other modalities of life and being) subjected to the irreparable violations of genocidal processes. It is this raw relation, in which white social existence materially and narratively consolidates itself within the normalized systemic logics of racial genocides, that forms the condition of possibility for the US social formation, from "abolition" onward. To push the argument further: the distended systems of racial genocides are not the massively deadly means toward some other (rational) historical ends, but are ends within themselves. Here we can decisively depart from the hegemonic juridical framings of "genocide" as dictated by the United Nations, and examine instead the logics of genocide that dynamically structure the different historical-social forms that have emerged from the classically identifiable genocidal systems of racial colonial conquest, indigenous physical and cultural extermination, and racial chattel slavery. To recall Trask and Marable, the historical logics of genocide permeate institutional assemblages that variously operationalize the historical forces of planned obsolescence, social neutralization, and "ceasing to exist." Centering a conception of racial genocide as a dynamic set of sociohistorical logics (rather than as contained, isolatable historical episodes) allows the slavery-to-prison continuity to be more clearly marked: the continuity is not one that hinges on the creation of late-20th and early-list century "slave labor," but rather on a re-institutionalization of anti-slave social violence. Within this historical schema, the post-1970s prison regime institutionalizes the raw relation of violence essential to white social being while mediating it so it appears as non-genocidal, non-violent, peacekeeping, and justice-forming. This is where we can also narrate the contemporary racial criminalization, policing, and incarcerating apparatuses as being historically tethered to the genocidal logics of the post-abolition, post-emancipation, and post-civil rights slave state. While it is necessary to continuously clarify and debate whether and how this statecraft of racial imprisonment is verifiably genocidal, there seems to be little reason to question that it is, at least, protogenocidal - displaying both the capacity and inclination for genocidal outcomes in its systemic logic and historical trajectory. This contextualization leads toward a somewhat different analytical framing of the "deadly symbiosis" that sociologist Loi'c Wacquant has outlined in his account of antiblack carceral-spatial systems. While it would be small-minded to suggest that the emergence of the late-20th century prison regime is an historical inevitability, we should at least understand that the structural bottom line of Black imprisonment over the last four decades - wherein the quantitative fact of a Black prison/jail majority has become taken-for-granted as a social fact - is a contemporary institutional manifestation of a genocidal racial substructure that has been reformed, and not fundamentally displaced, by the juridical and cultural implications of slavery's abolition. I have argued elsewhere for a conception of the US prison not as a selfcontained institution or isolated place, but rather as a material prototype of organized punishment and (social, civil, and biological) death (Rodriguez, 2006). To understand the US prison as a regime is to focus conceptually, theoretically, and politically on the prison as a pliable module or mobilized vessel through which technologies of racial domin8ance institutionalize their specific, localized practices of legitimated (state) violence. Emerging as the organic institutional continuity of racial slavery's genocidal violence, the US prison regime represents a form of human domination that extends beyond and outside the formal institutional and geographic domains of "the prison (the jail, etc.)." In this sense, the prison is the institutional signification of a larger regime of proto-genocidal violence that is politically legitimized by the state, generally valorized by the cultural common sense, and dynamically mobilized and institutionally consolidated across different historical moments: it is a form of social power that is indispensable to the contemporary (and postemancipation) social order and its changing structures of racial dominance, in a manner that elaborates the social logics of genocidal racial slavery. The binding presence of slavery within post-emancipation US state formation is precisely why the liberal multiculturalist narration of the Obama ascendancy finds itself compelled to posit an official rupture from the spectral and material presence of enslaved racial blackness. It is this symbolic rupturing - the presentation of a president who consummates the liberal dreams of Black citizenship. Black freedom, Black non-resentment, and Black patriotic subjectivity - that constructs the Black non-slave presidency as the flesh-and-blood severance of the US racial/racist state from its entanglement in the continuities of antiblack genocide. Against this multiculturalist narrative, our attention should be principally fixated on the bottom-line Blackness of the prison's genocidal logic, not the fungible Blackness of the presidency. CONCLUSION: FROM "POST-CIVIL RIGHTS" TO WHITE RECONSTRUCTION The Obama ascendancy is the signature moment of the post-1960s White Reconstruction, a period that has been characterized by the reformist elaboration of historically racist systems of social power to accommodate the political imperatives of American apartheid's downfall and the emergence of hegemonic (liberal-to-conservative) multiculturalisms. Byfocusing on how such reforms have neither eliminated nor fundamentally alleviated the social emergencies consistently produced by the historical logics of racial genocide, the notion of White Reconstruction departs from Marable's notion of the 1990s as the "twilight of the Second Reconstruction" (Marable. 2007. p. 216)19 and points toward another way of framing and narrating the period that has been more commonly referenced as the "post-civil rights" era. Rather than taking its primary point of historical departure to be the cresting of the Civil Rights Movement and its legacy of delimited (though no less significant) political-cultural achievements. White Reconstruction focuses on how this era is denned by an acute and sometimes aggressive reinvention and reorganization of the structural-institutional formations of racial dominance. Defined schematically, the recent half-century has encompassed a generalized reconstruction of "classically" white supremacist apparatuses of state-sanctioned and culturally legitimated racial violence. This general reconstruction has (1) strategically and unevenly dislodged various formal and de facto institutional white monopolies and diversified their personnel at various levels of access, from the entry-level to the administrative and executive levels (e.g., the sometimes aggressive diversity recruitment campaigns of research universities, urban police, and the military); while simultaneously (2) revamping, complicating, and enhancing the social relations of dominance, hierarchy, and violence mobilized by such institutions - relations that broadly reflect the long historical, substructural role of race in the production of the US national formation and socioeconomic order. In this sense, the notion of White Reconstruction brings central attention to how the historical logics of racial genocide may not only survive the apparent disruption of classical white monopolies on the administrative and institutional apparatuses that have long mobilized these violent social logics, but may indeed flourish through these reformist measures, as such logics are re-adapted into the protocols and discourses of these newly "diversified" racist and white supremacist apparatuses (e.g.. the apparatuses of the research university, police, and military have expanded their capacities to produce local and global relations of racial dominance, at the same time that they have constituted some of the central sites for diversity recruitment and struggles over equal access). It is, at the very least, a remarkable and dreadful moment in the historical time of White Reconstruction that a Black president has won office in an electoral landslide while well over a million Black people are incarcerated with the overwhelming consent of white/multiculturalist civil society.

Anti-Blackness structurally underpins all forms of violence. While racialized violence is still a daily reality for people caught in the position of the slave, the rhetoric of “oppression” or “exploitation” alone asks only how we might redeem this failed American experiment. There is no analogy for the structural suffering of the slave, meaning the starting point for any authentic engagement with social violence must begin with the creation of the anti-human and anti-beautiful void known as Blackness.

Pak 12 (Yumi, PhD in literature from UC-San Diego, “Outside Relationality: Autobiographical Deformations and the Literary Lineage of Afro-pessimism in 20th and 21st Century African American Literature,” Dissertation through Proquest)

Because the four authors I examine focus intensively on untangling and retangling the nexus of race, gender, and sexuality in autobiographical narratives, this project originally relied most heavily on the frameworks provided by queer theory and performance studies, as the structural organization and methodology behind both disciplines offered the characteristic of being “‘inter’ – in between... intergenric [sic], interdisciplinary, intercultural – and therefore inherently unstable” (“What is Performance Studies Anyway?” 360). My abstract ideation of the dissertation was one which conceptualized the unloosening of the authors’ respective texts from the ways in which they have been read in particular genres. Yet the investigative progression of my research redirected me to question the despondency I found within Toomer, Himes, Baldwin and Jones’ novels, a despondency and sorrow that seemed to reach beyond the individual and collective purportedly represented in these works. What does it mean, they seem to speculate, to suffer beyond the individual, beyond the collective, and into the far reaches of paradigmatic structure? What does it mean to exist beyond “social oppression” and veer instead into what Frank B. Wilderson, III calls “structural suffering” (Red, White & Black 36)? Briefly, Wilderson utilizes what he calls Frantz Fanon’s splitting of “the hair[s] between social oppression and structural suffering”; in other words, Wilderson refutes the possibility of analogizing blackness with any other positionality in the world. Others may be oppressed, indeed, may suffer experientially, but only the black, the paradigmatic slave, suffers structurally. Afro-pessimism, the theoretical means by which I attempt to answer this query, provides the integral term and parameters with which I bind together queer theory, performance studies, and autobiography studies in order to propose a re-examination of these authors and their texts. The structural suffering of blackness seeps into all elements of American history, culture, and life, and thus I begin my discussion with an analysis of Hortense Spillers’ concept of an American grammar in “Mama’s Baby, Papa’s Maybe: An American Grammar Book*.” To theorize blackness is to begin with the slave ship, in a space that is in actuality no place.*7 In discussing the transportation of human cargo across the Middle Passage, Spillers writes that this physical theft of bodies was “a willful and violent (and unimaginable from this distance) severing of the captive body from its motive will, its active desire” (Spillers 67). She contends here that in this mass gathering and transportation, what becomes illuminated is not only the complete and total deracination of native from soil, but rather the evisceration of subjectivity from blackness, the evacuation of will and desire from the body; in other words, we see that even before the black body there is flesh, “that zero degree of social conceptualization that does not escape concealment under the brush of discourse, or the reflexes of iconography” (67). Black flesh, which arrives in the United States to be manipulated and utilized as slave bodies, is “a primary narrative” with its “seared, divided, ripped-apartness, riveted to the ship’s hole, fallen, or ‘escaped’ overboard” (67). These markings – “lacerations, woundings, fissures, tears, scars, openings, ruptures, lesions, rendings, punctures of the flesh” – are indicative of the sheer scale of the structural violence amassed against blackness, and from this beginning Spillers culls an “American grammar” that grounds itself in the “rupture and a radically different kind of cultural continuation**,” a grammar that is the fabric of blackness in the United States** (67, 68). As **Wilderson observes, *“Africans went into the ships and came out as Blacks”***(Red, White & Black 38). In other words, in the same moment they are (re)born as blacks, they are doomed to death as slaves. This rupture, I argue, is evident in the definitions of slavery set forth by Orlando Patterson in his seminal volume, Slavery and Social Death: natal alienation, general dishonor and openness to gratuitous violence. The captive body, which is constructed with torn flesh, is laid bare to any and all, and it is critical to note here that Patterson, in line with **Afro-pessimists, does not align slavery with labor. The slave can** – and did – **work, but what defines him/her as such is that as a dishonored and violated object**, the **master’s whims** for him/her to work, or not work, can be carried out without ramifications. Rather, the slave’s powerlessness is heightened to the greatest possible capacity, wherein s/he is marked by social death and the “permanent, violent domination” of their selves (Patterson 13). Spillers’ “radically different kind of cultural continuation” finds an articulation of the object status of blackness in the United States, one which impugns the separation of “slave” and “black.” As Jared Sexton and Huey Copeland inquire, “[h]ow might it feel to be... a scandal to ontology, an outrage to every marker of the human? What, in the final analysis, does it mean to suffer?” (Sexton and Copeland 53). Blackness functions as a scandal to ontology because, as Wilderson states, black suffering forms the ethical backbone of civil society. He writes, [c]hattel slavery did not simply reterritorialize the ontology of the African. It also created the Human out of cultural disparate identities from Europe to the East... Put another way, through chattel slavery the world gave birth and coherence to both its joys of domesticity and to its struggles of political discontent, and with these joys and struggles, the Human was born, but not before it murdered the Black, forging a symbiosis between the political ontology of Humanity and the social death of Blacks. (Red, White & Black 20 – 21) Again, the African is made black, and in this murder both ontological and physical, humanity gains its coherence. It is not my intention (nor of other Afro-pessimists) to argue that violence has only ever been committed against black individuals and communities in the United States, or in the world, but rather that the structural suffering that defines blackness, the violence enacted against blackness to maintain its positioning outside of civil society, that demarcates the black as slave, has no horizontal equivalent and, indeed, provides the logical ethos of existence for all othered subjectivities; by this I mean that all other subjects (and I use this word quite intentionally) retain a body and not the zero degree of flesh. As Sexton writes, “we might say of the colonized: you may lose your motherland, but you will not ‘lose your mother’ (Hartman 2007)” (“The Curtain of the Sky” 14). This is precisely why Sexton offers the succinct definition of Afro-pessimism as “a political ontology dividing the Slave from the world of the Human in a constitutive way” (“The Social Life of Social Death” 23). Furthermore, Afro-pessimists contest the idea that the modern world is one wherein the price of labor determines the price of being equally for all people. In this capitalistic reading of the world, we summon blacks back into civil society by utilizing Marxism to assume “a subaltern structured by capital, not by white supremacy” (“Gramsci’s Black Marx” 1). While it is undeniable, of course, that black bodies and labor were used to aid in the economic growth of the United States, we return again to the point that what defines enslavement is accumulation and fungibility, alongside natal alienation, general dishonor, and openness to gratuitous violence; the slave, then, is not constituted as part of the class struggle.8 While it is true “that labor power is exploited and that the worker is alienated in it,” it is also true that “workers labor on the commodity, they are not the commodity itself is, their labor power is” (Red, White & Black 50). The slave is, then, invisible within this matrix, and, to a more detrimental effect, invisible within the ontology of lived subjects entirely. The slave cannot be defined as loss – as can the postcolonial subject, the woman, or the immigrant – but can only be configured as lack, as there is no potential for synthesis within a rubric of antagonism. Wilderson sets up the phrase “rubric of antagonism” in opposition to “rubric of conflict” to clarify the positionality of blacks outside relationality. The former is “an irreconcilable struggle between entities, or positions, the resolution of which is not dialectical but entails the obliteration of one of the positions,” whereas the latter is “a rubric of problems that can be posed and conceptually solved” (Red, White & Black 5). He continues, “[i]f a Black is the very antithesis of a Human subject... then his or her paradigmatic exile is not simply a function of repressive practices on the part of institutions” (9). Integrating Hegel and Marx, and returning to Spillers, Wilderson argues that within this grammar of suffering, the slave is not a laborer but what he calls “anti- Human, against which Humanity establishes, maintains, and renews its coherence, its corporeal integrity” (11). In contrast to imagining the black other in opposition to whiteness, Wilderson and other Afro-pessimists theorize blackness as being absent in the dialectic, as “anti-Human.”

Our advocacy is the death of America, and the life of the slave.

Wilderson 7 Frank B. Assistant professor of African American Studies and Drama at UC Irvine “The Prison Slave as Hegemony’s (Silent) Scandal,” Warfare in the American Homeland Policing in a Penal

The value of reintroducing the unthought category of the slave, by way of noting the absence of the Black subject, lies in the Black subjects potential for extending the demand placed on state/capital formations because its re-introduction into the discourse expands the intensity of the antagonism. In other words, the positionality of the slave makes a demand, which is in excess of the demand made by the positionality of the worker. The worker demands that productivity be fair and democratic (Gramsci's new hegemony, Lenin's dictatorship of the proletariat, in a word, socialism), the slave, on the other hand, demands that production stop; stop without recourse to its ultimate democratization. Work is not an organic principle for the slave. The absence of Black subjectivity from the crux of radical discourse is symptomatic of the text's inability to cope with the possibility that the generative subject of capitalism, the Black body of the 15th and 16th centuries, and the generative subject that resolves late-capital's over-accumulation crisis, the Black (incarcera ted) body of t he 20th and 21st centuries, d o not reify the basic categories which structure conflict within civil society: the categories of work and exploitation.¶ If, by way of the Black subject, we return to the underlying grammar of the question What does it mean to be free? that grammar being the question What does it mean to suffer? then we come up against a grammar of suffering not only in excess of any semiotics of exploitation but a grammar of suffering beyond signification itself, a suffering that can not be spoken because the gratuitous terror of white supremacy is as much contingent upon a logic -- say the logic of capital, or t he logic hierarchy -- as it is upon the irrationality of white fantasies and shared pleasures. It extends beyond texualization. When talking about this terror Cornel West uses the terms black invisibility and nameless to designate, at the level of existence, what I am calling absence, void, or scandal at the level of discourse. He writes:¶ [America's] unrelenting assault on black humanity produced the fundamental condition of black culture -- that of black invisibility and namelessness On the crucial existential level relating to black invisibility and namelessness, the first difficult challenge and demanding discipline is to ward off madness and discredit suicide as a desirable option. A central preoccupation of black culture is that of confronting candidly the ontological wounds, psychic scars, and existential bruises of black people while fending off insanity and self-annihilation. This is why the "ur-text" of black culture is neither a word nor a book, not and architectural monument or a legal brief. Instead, it is a guttural cry and a wrenching moan -- a cry not so much for help as for home, a moan less out of¶ compliant than for recognition (80 -81). Thus, the Black subject position in America represents an antagonism, a demand that cannot be satisfied through a transfer of ownership/organization of existing rubrics; whereas the Gramscian subject, the worker, represents a demand that can indeed be satisfied by way of a successful war of position, which brings about the end of exploitation. The worker calls into question the legitimacy of productive practices, the slave calls into question the legitimacy of productivity itself.¶ From the positionality of the worker the question What does it mean to be free? is raised. But the question hides the process by which the discourse already assumes a hidden grammar which has already posed and answered the question What does it mean to suffer? And that grammar is organized around the categories of exploitation (unfair relations of work or wage slavery) and work (bodies that labor). Thus, exploitation (wage slavery) is the only category of oppression which concerns Gramsci: society, Western society, thrives on the exploitation of the Gramscian subject. Full stop. Again, this is inadequate, because it would call white supremacy "racism" and articulate it as a derivative phenomenon of the capitalist matrix, rather than incorporating white supremacy as a matrix, which is also foundational to American institutionality. This, in addition, has scandalous implications for the relationship between hegemony and Black positionality. What I am saying, is that the insatiability of the slave demand upon existing structures means that it can not find its articulation within the modality of hegemony (influence, leadership, consent) the Black body can not give its consent because generalized trust, the precondition for the solicitation of consent, equals racialized whiteness (Lindon Barrett). Furthermore, as Orland Patterson points out, slavery is natal alienation by way of social death, which is to say that a slave has no symbolic currency or material labor power to exchange: a slave does not enter into a transaction of value (however asymmetrical) but is subsumed by direct relations of force, which is to say that a slave is an articulation of a despotic irrationality whereas the worker is an articulation of a symbolic rationality. White supremacys despotic irrationality is as foundational to American institutionality as capitalism symbolic rationality because, as Cornel West writes, it [D]ictates the limits of the operation of American democracy -- with black folk the indispensable sacrificial lamb vital to its sustenance. Hence black subordination constitutes the necessary condition for the flourishing of American democracy, the tragic prerequisite for America itself. This is, in part, what Richard Wright meant when he noted, "The Negro is America's metaphor." (72)¶ We all know that a metaphor comes into being through a violence which kills the thing that the concept might live. Gramscian discourse and coalition politics can only come to grips with America's structuring rationality what it calls capitalism, or political economy but not with America's structuring irrationality which is anti-production of late capital, the hyper- discursive violence which first kills the B lack subject, t hat the concept may be born. In other words, from the incoherence of Black death, America generates the coherence of White life. This is important when thinking the Gramscian paradigm and its spiritual progenitors in the world of American organizing today, which are so dependent on their overvaluation of hegemony and civil society: struggles over hegemony are seldom, if ever, a signifying at some point they require coherence, they require categories for the record which means they contain the seeds of anti- Blackness.¶ What does it mean to be positioned not as a positive term in the struggle for anti- capitalist hegemony, i.e. as a worker, but to be positioned in excess of hegemony, to be a catalyst which disarticulates the very rubric of hegemony, to be a scandal to its assumptive, foundational logic, to threaten civil societys discursive integrity?

### Off

The affirmative represents a strategy of lip service restraint re-affirms executive power granting legitimacy to sovereign manipulation of law

 **Posner & Vermeule 10** Eric A. Posner [Kirkland & Ellis Distinguished Service Professor of Law] AND Adrian Vermeule [Jr. Professor of Law at Harvard Law School] “The Executive Unbound: After the Madisonian Republic”, Oxford: Oxford University Press, USA, 2010 [Questia] pp 3-5

Some commentators argue that the federal courts have taken over Congress’s role as aninstitutional check. It is true that the Supreme Court has shown little compunction about striking down statutes (although usually state statutes), and that it rejected some of the legal theories that the Bush administration used to justify its counterterrorism policies. However, the Court remains a marginal player. The Court ducked any legal rulings on counter terror policies until the 2004 Hamdi decision, and even after the Boumediene decision in 2008, no detainee has been released by final judicial order, from Guantánamo or elsewhere, except incases where the government chose not to appeal the order of a district judge. The vast majorityof detainees have received merely another round of legal process. Some speculate that judicialthreats to release detainees have caused the administration to release them preemptively. Yetthe judges would incur large political costs for actual orders to release suspected terrorists, andthe government knows this, so it is unclear that the government sees the judicial threats ascredible or takes them very seriously. The government, of course, has many administrativeand political reasons to release detainees, quite apart from anything the courts do. So the executive submits to judicial orders in part because the courts are careful not to give orders that the executive will resist.¶ In general, judicial opposition to the Bush administration’s counterterrorism policies took the form of incremental rulings handed down at a glacial pace, none of which actually stopped any of the major counterterrorism tactics of that administration, including the application of military power against Al Qaeda, the indefinite detention of members of Al Qaeda, targeted assassinations, the immigration sweeps, even coercive interrogation. The (limited)modifications of those tactics that have occurred resulted not from legal interventions but from policy adjustments driven by changed circumstances and public opinion, and by electoral victory of the Obama administration. However, the Obama administration has mostly confirmed and in some areas even expanded the counterterrorism policies of the Bush administration. Strong executive government is bipartisan. The 9/11 attack provided a reminder of just how extensive the president’s power is. The executive claimed the constitutional authority to, in effect, use emergency powers. Because Congress provided redundant statutory authority, and the Supreme Court has steadfastly refused to address the ultimate merits of the executive’s constitutional claims, these claims were never tested in a legal or public forum. But it is worth trying to imagine what would have happened if Congress had refused to pass the Authorization for Use of Military Force and the Supreme Court had ordered the¶ executive to release detainees in a contested case. We think that the executive, backed up as it was by popular opinion, would have refused to obey. And, indeed, for just that reason, Congress would never have refused its imprimatur and the Supreme Court would never have stood in the executive’s way. The major check on the executive’s power to declare an emergency and to use emergency powers is—political. The financial crisis of 2008–2009 also revealed the extent of executive power. Acting together, the Fed, the Treasury, and other executive agencies spent hundreds of billions of dollars, virtually nationalizing parts of the financial system. Congress put up a fuss, but it could not make policy and indeed hardly even influenced policy. Congress initially refused to supply a blank check, then in world-record time changed its mind and gave the blank check, then watched helplessly as the administration adopted policies different from those for which it said the legislation would be needed. Courts played no role in the crisis except to ratify executive actions in tension with the law.2'

The justifications for restrictions presuppose that the suspension of legal rights is the exception and not, for many people, the rule. This logic perpetuates the logic of legal black holes that subject us to the state of exception

**Fabbri 9** Lorenzo Fabbri [PhD in Romance Studies, professor of Italian @ University of Minnesota –areas of research Biopolitics, Continental Philosphy, Humanities, Italian Studies, Critical Theory, Film Studies, and Post-Colonial Studies] ¶ “Chronotopologies of the Exception: Agamben and Derrida before the Camps”¶ Diacritics, Volume 39, Number 3, Fall 2009, pp. 77-95 (Article) Published by The Johns Hopkins University Press

I begin with Bruce Ackerman who in “The Emergency Constitution” tried to demarcate ¶ an unmistakable threshold between the normal functioning of a constitutional democracy and its exceptional suspension. After having separated these two realms, Ackerman ¶ concerns himself with determining the actor who should have the authority to switch ¶ from normality to exceptionality (and vice versa). From this perspective he argues for ¶ the necessity of a statutory reform that would unmistakably preserve the legislature authority over the exception threshold, and therefore prevent the executive from turning ¶ a transitional emergency regime into a permanent police state. However imperative or ¶ praiseworthy such an attempt may be, I argue that Ackerman’s legalist framework fails ¶ to notice that the exception is not something that—sometimes and somewhere, in a local ¶ and transitory context—needs to be enforced in order to deal with national emergencies. ¶ Following Adrian Vermeule, my first critical intervention consists in showing that any ¶ defense of classic legalism overlooks the inevitable existence, within a system of rights, ¶ of legal black and grey holes that always allow for negotiations with the rule of law. ¶ Against Vermeule, I claim that these loopholes are not created by the judicial discretion ¶ inscribed in administrative law, but provoked by the naked formality of laws, i.e., by the ¶ very form of law. Inspired by Jacques Derrida’s description of the textual structure of our ¶ relation to law and Agamben’s identifying the state of exception as the paradigm of government, I argue that spectacular exceptions granted to the executive when emergencies ¶ transpire should not distract us from the micro-exceptions that are produced every time ¶ the meaning of a certain law is decided upon. In other words, the executive’s reactions ¶ to national crises should not prevent us from acknowledging that, for certain segments ¶ of the population, freedom is normally, and strategically, negated. After highlighting the ¶ structural affinities between Derrida and Agamben’s topologies of the exception, I will ¶ show why, according to Agamben, deconstruction’s eternal and tactical negotiation with a ¶ law recognized to always be in force without any fixed meaning is insufficient. In order to ¶ improve our position in the struggle against an emergency that has always been the rule, ¶ the task before us is the creation of truly extra-juridical spaces that might function as real ¶ exceptions to sovereign power.

Our alternative is to shake out the rug from under the 1ac's mode of legal analysis.

Singer 84 - Associate Professor of Law (Joseph William Singer, Associate Professor of Law at Boston University, 1984, [“The Player and the Cards: Nihilism and Legal Theory,” Yale Law Journal (94 Yale L.J. 1)

What shall we do then about legal theory? I think we should abandon the idea that what we are supposed to be doing is applying or articulating a rational method that will tell us once and for all (or even for our generation) what we are supposed to believe and how we are supposed to live. We should no longer view the project of giving a "rational foundation" for law as a worthwhile endeavor. If morality and law are matters of conviction rather than logic, we have no reason to be ashamed that our deeply felt beliefs have no "basis" that can be demonstrated through a rational decision procedure or that we cannot prove them to be "true" or "right." Rorty has distinguished between two broad types of theory: systematic and edifying. n165 Systematic philosophers build systems of thought that they claim explain large bodies of material, guide theoretical development, and generate answers to difficult questions. Systematizers can be either normal or revolutionary philosophers. The normal systematizers work within established tradition; the revolutionary systematizers seek to replace the established paradigm with a new, better, or truer paradigm of thought. Both try to establish a framework that will set bounds on the legitimate content of discourse. Edifying philosophers, on the other hand, seek to shake the rug out from under existing normal or abnormal systems of thought. They seek to make us doubt the necessity and coherence of our views. They seek to free us from feeling that we have "gotten" the answer and that we no longer need to question ourselves about what we stand for. Edifying philosophers do not seek to induce people to give up their moral views. They do not [\*58] argue against profound political commitment. Rather, they strive to make us realize that our views are matters of commitment rather than knowledge. n166 Legal scholars can perform an edifying role by broadening the perceived scope of legitimate institutional alternatives. n167 One way to do this is to demonstrate the contingent and malleable nature of legal reasoning and legal institutions. The greatest service that legal theorists can provide is active criticism of the legal system. Criticism is initially reactive and destructive, rather than constructive. But our mistaken belief that our current ways of doing things are somehow natural or necessary hinders us from envisioning radical alternatives to what exists. To exercise our utopian imagination, it is helpful first to expose the structures of thought that limit our perception of what is possible. Judges rationalize their decisions as the results of reasoned elaboration of principles inherent in the legal system. Instead of choosing among available descriptions, theories, vocabularies, and course of action, the official who feels "bound" reasons from nonexistent "grounds" and hides from herself the fact that she is exercising power. n168 By systematically and constantly criticizing the rationalizations [\*59] of traditional legal reasoning, we can demonstrate, again and again, that a wider range of alternatives is available to us. I therefore advocate the persistent demonstration in all doctrinal fields that both the legal rules in force and the arguments that are presented to justify and criticize them are incoherent. n169 They are incoherent because they are constructed in ways that make it impossible for them to satisfy their own claims to determinacy, objectivity and neutrality. n170 Legal theory is at war with itself. This kind of criticism would be useful even if we could not imagine a satisfactory alternative to traditional legal theory. Such criticism reminds us that legal theory cannot answer the question of how we are going to live together. We are going to have to answer that question ourselves.

### 2NC

Yancy ‘5 [George, Associate Professor of Philosophy at Duquesne University and Coordinator of the Critical Race Theory Speaker Series, “Whiteness and the Return of the Black Body”, The Journal of Speculative Philosophy 19.4 (2005) 215-241, Muse]

I write out of a personal existential context. This context is a profound source of knowledge connected to my "raced" body. Hence, I write from a place of lived embodied experience, a site of exposure. In philosophy, the only thing that we are taught to "expose" is a weak argument, a fallacy, or someone's "inferior" reasoning power. The embodied self is bracketed and deemed irrelevant to theory, superfluous and cumbersome in one's search for truth. It is best, or so we are told, to reason from nowhere. Hence, the white philosopher/author presumes to speak for all of "us" without the slightest mention of his or her "raced" identity. Self-consciously writing as a white male philosopher, Crispin Sartwell observes: Left to my own devices, I disappear as an author. That is the "whiteness" of my authorship. This whiteness of authorship is, for us, a form of authority; to speak (apparently) from nowhere, for everyone, is empowering, though one wields power here only by becoming lost to oneself. But such an authorship and authority is also pleasurable: it yields the pleasure of self-forgetting or [End Page 215] apparent transcendence of the mundane and the particular, and the pleasure of power expressed in the "comprehension" of a range of materials. (1998, 6) To theorize the Black body one must "turn to the [Black] body as the radix for interpreting racial experience" (Johnson [1993, 600]).1 It is important to note that this particular strategy also functions as a lens through which to theorize and critique whiteness; for the Black body's "racial" experience is fundamentally linked to the oppressive modalities of the "raced" white body. However, there is no denying that my own "racial" experiences or the social performances of whiteness can become objects of critical reflection. In this paper, my objective is to describe and theorize situations where the Black body's subjectivity, its lived reality, is reduced to instantiations of the white imaginary, resulting in what I refer to as "the phenomenological return of the Black body."2 These instantiations are embedded within and evolve out of the complex social and historical interstices of whites' efforts at self-construction through complex acts of erasure vis-à-vis Black people. These acts of self-construction, however, are myths/ideological constructions predicated upon maintaining white power. As James Snead has noted, "Mythification is the replacement of history with a surrogate ideology of [white] elevation or [Black] demotion along a scale of human value" (Snead 1994, 4). How I understand and theorize the body relates to the fact that the body—in this case, the Black body—is capable of undergoing a sociohistorical process of "phenomenological return" vis-à-vis white embodiment. The body's meaning—whether phenotypically white or black—its ontology, its modalities of aesthetic performance, its comportment, its "raciated" reproduction, is in constant contestation. The hermeneutics of the body, how it is understood, how it is "seen," its "truth," is partly the result of a profound historical, ideological construction. "The body" is positioned by historical practices and discourses. The body is codified as this or that in terms of meanings that are sanctioned, scripted, and constituted through processes of negotiation that are embedded within and serve various ideological interests that are grounded within further power-laden social processes. The historical plasticity of the body, the fact that it is a site of contested meanings, speaks to the historicity of its "being" as lived and meant within the interstices of social semiotics. Hence: a) the body is less of a thing/being than a shifting/changing historical meaning that is subject to cultural configuration/reconfiguration. The point here is to interrogate the "Black body" as a "fixed and material truth" that preexists "its relations with the world and with others"3 ; b) the body's meaning is fundamentally symbolic (McDowell 2001, 301), and its meaning is congealed through symbolic repetition and iteration that emits certain signs and presupposes certain norms; and, c) the body is a battlefield, one that is fought over again and again across particular historical moments and within particular social spaces. "In other words, the concept of the body provides only the illusion of self-evidence, facticity, 'thereness' for something [End Page 216] fundamentally ephemeral, imaginary, something made in the image of particular social groups" (301). On this score, it is not only the "Black body" that defies the ontic fixity projected upon it through the white gaze, and, hence, through the episteme of whiteness, but the white body is also fundamentally symbolic, requiring demystification of its status as norm, the paragon of beauty, order, innocence, purity, restraint, and nobility. In other words, given the three suppositions above, both the "Black body" and the "white body" lend themselves to processes of interpretive fracture and to strategies of interrogating and removing the veneer of their alleged objectivity. To have one's dark body invaded by the white gaze and then to have that body returned as distorted is a powerful experience of violation. The experience presupposes an anti-Black lived context, a context within which whiteness gets reproduced and the white body as norm is reinscribed.The late writer, actor, and activist Ossie Davis recalls that at the age of six or seven two white police officers told him to get into their car. They took him down to the precinct. They kept him there for an hour, laughing at him and eventually pouring cane syrup over his head. This only created the opportunity for more laughter, as they looked upon the "silly" little Black boy. If he was able to articulate his feelings at that moment, think of how the young Davis was returned to himself: "I am an object of white laughter, a buffoon." The young Davis no doubt appeared to the white police officers in ways that they had approved. They set the stage, created a site of Black buffoonery, and enjoyed their sadistic pleasure without blinking an eye. Sartwell notes that "the [white] oppressor seeks to constrain the oppressed [Blacks] to certain approved modes of visibility (those set out in the template of stereotype) and then gazes obsessively on the spectacle he has created" (1998, 11). Davis notes that he "went along with the game of black emasculation, it seemed to come naturally" (Marable 2000, 9). After that, "the ritual was complete" (9). He was then sent home with some peanut brittle to eat. Davis knew at that early age, even without the words to articulate what he felt, that he had been violated. He refers to the entire ritual as the process of "niggerization." He notes: The culture had already told me what this was and what my reaction to this should be: not to be surprised; to expect it; to accommodate it; to live with it. I didn't know how deeply I was scarred or affected by that, but it was a part of who I was. (9) Davis, in other words, was made to feel that he had to accept who he was, that "niggerized" little Black boy, an insignificant plaything within a system of ontological racial differences. This, however, is the trick of white ideology; it is to give the appearance of fixity, where the "look of the white subject interpellates the black subject as inferior, which, in turn, bars the black subject from seeing him/herself without the internalization of the white gaze" (Weheliye 2005, 42). On this score, it is white bodies that are deemed agential. They configure "passive" [End Page 217] Black bodies according to their will. But it is no mystery; for "the Negro is interpreted in the terms of the white man. White-man psychology is applied and it is no wonder that the result often shows the Negro in a ludicrous light" (Braithwaite 1992, 36). While walking across the street, I have endured the sounds of car doors locking as whites secure themselves from the "outside world," a trope rendering my Black body ostracized, different, unbelonging. This outside world constitutes a space, a field, where certain Black bodies are relegated. They are rejected, because they are deemed suspicious, vile infestations of the (white) social body. The locks on the doors resound: Click. Click. Click. Click. Click. Click. ClickClickClickClickClickClickClick! Of course, the clicking sounds are always already accompanied by nervous gestures, and eyes that want to look, but are hesitant to do so. The cumulative impact of the sounds is deafening, maddening in their distorted repetition. The clicks begin to function as coded sounds, reminding me that I am dangerous; the sounds create boundaries, separating the white civilized from the dark savage, even as I comport myself to the contrary. The clicking sounds mark me, they inscribe me, they materialize my presence in ways that belie my intentions. Unable to stop the clicking, unable to establish a form of recognition that creates a space of trust and liminality, there are times when one wants to become their fantasy, to become their Black monster, their bogeyman, to pull open the car door: "Surprise. You've just been carjacked by a ghost, a fantasy of your own creation. Now, get the fuck out of the car." I have endured white women clutching their purses or walking across the street as they catch a glimpse of my approaching Black body. It is during such moments that my body is given back to me in a ludicrous light, where I live the meaning of my body as confiscated. Davis too had the meaning of his young Black body stolen. The surpluses being gained by the whites in each case are not economic. Rather, it is through existential exploitation that the surpluses extracted can be said to be ontological—"semblances of determined presence, of full positivity, to provide a sense of secure being" (Henry 1997, 33). When I was about seventeen or eighteen, my white math teacher initiated such an invasion, pulling it off with complete calm and presumably self-transparency. Given the historical construction of whiteness as the norm, his own "raced" subject position was rendered invisible. After all, he lived in the real world, the world of the serious man, where values are believed anterior to their existential founding. As I recall, we were discussing my plans for the future. I told him that I wanted to be a pilot. I was earnest about this choice, spending a great deal of time reading about the requirements involved in becoming a pilot, how one would have to accumulate a certain number of flying hours. I also read about the dynamics of lift and drag that affect a plane in flight. After no doubt taking note of my firm commitment, he looked at me and implied that I should be realistic (a code word for realize that I am Black) about my goals. He said that I should become a carpenter or a bricklayer. I was exposing myself, telling a trusted teacher what I wanted to be, and he returned me to myself as something [End Page 218] that I did not recognize. I had no intentions of being a carpenter or a bricklayer (or a janitor or elevator operator for that matter). The situation, though, is more complex. It is not that he simply returned me to myself as a carpenter or a bricklayer when all along I had this image of myself as a pilot. Rather, he returned me to myself as a fixed entity, a "niggerized" Black body whose epidermal logic had already foreclosed the possibility of being anything other than what was befitting its lowly station. He was the voice of a larger anti-Black racist society that "whispers mixed messages in our ears" (Marable 2000, 9), the ears of Black people who struggle to think of themselves as a possibility. He mentioned that there were only a few Black pilots and that I should be more realistic. (One can only imagine what his response would have been had I said that I wanted to be a philosopher, particularly given the statistic that Black philosophers constitute about 1.1% of philosophers in the United States). Keep in mind that this event did not occur in the 1930s or 1940s, but around 1979. The message was clear. Because I was Black, I had to settle for an occupation suitable for my Black body,4 unlike the white body that would no doubt have been encouraged to become a pilot. As with Davis, having one's Black body returned as a source of impossibility, one begins to think, to feel, to emote: "Am I a nigger?" The internalization of the white gaze creates a doubleness within the psyche of the Black, leading to a destructive process of superfluous self-surveillance and self-interrogation. This was indeed a time when I felt ontologically locked into my body. My body was indelibly marked with this stain of darkness. After all, he was the white mind, the mathematical mind, calculating my future by factoring in my Blackness. He did not "see" me, though. Like Ellison's invisible man, I occupied that paradoxical status of "visible invisibility." Within this dyadic space, my Black body phenomenologically returned to me as inferior. To describe the phenomenological return of the Black body is to disclose how it is returned as an appearance to consciousness, my consciousness. The (negatively) "raced" manner in which my body underwent a phenomenological return, however, presupposes a thick social reality that has always already been structured by the ideology and history of whiteness. More specifically, when my body is returned to me, the white body has already been constituted over centuries as the norm, both in European and Anglo-American culture, and at several discursive levels from science to philosophy to religion. In the case of my math teacher, his whiteness was invisible to him as my Blackness was hyper-visible to both of us. Of course, his invisibility to his own normative here is a function of my hyper-visibility. It is important to keep in mind that white Americans, more generally, define themselves around the "gravitational pull," as it were, of the Black.5 The not of white America is the Black of white America. This not is essential, as is the invisibility of the negative relation through which whites are constituted. All of embodied beings have their own "here." My white math teacher's racist social performances (for example, his "advice" to me), within the context of a [End Page 219] white racist historical imaginary and asymmetric power relations, suspends and effectively disqualifies my embodied here. What was the message communicated? Expressing my desire to be, to take advantage of the opportunities for which Black bodies had died in order to secure, my ambition "was flung back in my face like a slap" (Fanon 1967, 114). Fanon writes: The white world, the only honorable one, barred me from all participation. A man was expected to behave like a man. I was expected to behave like a black man—or at least like a nigger. I shouted a greeting to the world and the world slashed away my joy. I was told to stay within bounds, to go back where I belonged. (114–15) According to philosopher Bettina Bergo, drawing from the thought of Emmanuel Levinas, "perception and discourse—what we see and the symbols and meanings of our social imaginaries—prove inextricably the one from the other" (2005, 131). Hence, the white math teacher's perception, what he "saw," was inextricably linked to social meanings and semiotic constructions and constrictions that opened up a "field of appearances" regarding my dark body. There is nothing passive about the white gaze. There are racist sociohistorical and epistemic conditions of emergence that construct not only the Black body, but the white body as well. So, what is "seen" when the white gaze "sees" "my body" and it becomes something alien to me?

### 1NR

### Link Debate

#### The permutation is a tactic to legitimize the violence of the law---codifying status-quo policy sanitizes expanding state violence---their appeal to juridical legitimation results in malleable legal conventions that are ultimately meaningless

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Nearly two centuries ago, Prussian military strategist, Carl von Clausewitz, observed how war is merely a “continuation of political commerce” by “other means”.70 Today, the lawfare of the US military is a continuation of war by legal means. Indeed, for US Deputy Judge Advocate General, Major General Charles Dunlap, it “has become a key aspect of modern war”.71 For Dunlap and his colleagues in the JAG corps, the law is a “force multiplier”, as Harvard legal scholar, David Kennedy, explains: it “structures logistics, command, and control”; it “legitimates, and facilitates” violence; it “privileges killing”; it identifies legal “openings that can be made to seem persuasive”, promissory, necessary and indeed therapeutic; and, of course, it is “a communication tool” too because defining the battlefield is not only a matter of “privileging killing”, it is also a “rhetorical claim”.72 Viewed in this way, the law can be seen to in fact “contribute to the proliferation of violence rather than to its containment”, as Eyal Weizman has instructively shown in the case of recent Israeli lawfare in Gaza.73 ¶ In the US wars in Iraq, Afghanistan and broader war on terror, the Department of Defense has actively sought to legalize its use of biopolitical violence against all those deemed a threat. Harvey Rishikof, the former Chair of the Department of National Security Strategy at the National War College in Washington, recently underlined ‘juridical warfare’ (his preferred designation over ‘lawfare’) as a pivotal “legal instrument” for insurgents in the asymmetric war on terror.74 For Rishikof and his contemporaries, juridical warfare is always understood to mean the legal strategies of the weak ‘against’ the United States; it is never acknowledged as a legal strategy ‘of’ the United States. However, juridical warfare has been a proactive component of US military strategy overseas for some time, and since the September 11 attacks in New York and Washington in 2001, a 15 renewed focus on juridical warfare has occurred, with the JAG Corps playing a central role in reforming, prioritizing and mobilizing the law as an active player in the war on terror.75 ¶ Deputy Judge Advocate General, Major General Charles Dunlap, recently outlined some of the key concerns facing his corps and the broader US military; foremost of which is the imposing of unnecessary legal restraints on forward-deployed military personnel.76 For Dunlap, imposing legal restraints on the battlefield as a “matter of policy” merely “play[s] into the hands of those who would use [international law] to wage lawfare against us”.77 Dunlap’s counter-strategy is simply “adhering to the rule of law”, which “understands that sometimes the legitimate pursuit of military objectives will foreseeably – and inevitably – cause the death of noncombatants”; indeed, he implores that “this tenet of international law be thoroughly understood”.78 But ‘the’ rule of international law that Dunlap has in mind is merely a selective and suitably enabling set of malleable legal conventions that legitimate the unleashing of military violence.79 As David Kennedy illuminates so brilliantly in Of War and Law: ¶ We need to remember what it means to say that compliance with international law “legitimates.” It means, of course, that killing, maiming, humiliating, wounding people is legally privileged, authorized, permitted, and justified”.80 ¶ The recent ‘special issue on juridical warfare’ in the US military’s flagship journal, Joint Force Quarterly, brought together a range of leading judge advocates, specialists in military law, and former legal counsels to the Chairman of the Joint Chiefs of Staff. All contributions addressed the question of “[w]hich international conventions govern the confinement and interrogation of terrorists and how”.81 The use of the term ‘terrorists’ instead of suspects sets the tone for the ensuing debate: in an impatient defense of ‘detention’, Colonel James Terry bemoans the “limitations inherent in the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006” (which he underlines only address detainees at the US Naval Base at Guantanamo) and asserts that “requirements inherent in the war on terror will likely warrant expansion of habeas 16 corpus limitations”;82 considering ‘rendition’, Colonel Kevin Cieply asks the shocking question “[i]s rendition simply recourse to the beast at a necessary time”;83 Colonel Peter Cullen argues for the necessity of the “role of targeted killing in the campaign against terror”;84 Commander Brian Hoyt contends that it is “time to re-examine U.S. policy on the [international criminal] court, and it should be done through a strategic lens”;85 while Colonel James Terry furnishes an additional concluding essay with the stunningly instructive title ‘The International Criminal Court: A Concept Whose Time Has Not Come’.86 These rather chilling commentaries attest to one central concern of the JAG Corps and the broader military-political executive at the Pentagon: that enemies must not be allowed to exploit “real, perceived, or even orchestrated incidents of law-of-war violations being employed as an unconventional means of confronting American military power”.87 And such thinking is entirely consistent with the defining National Defense Strategy of the Bush administration, which signalled the means to win the war on terror as follows: “we will defeat adversaries at the time, place, and in the manner of our choosing”.88 ¶ If US warfare in the war on terror is evidently underscored by a ‘manner of our choosing’ preference – both at the Pentagon and in the battlefield – this in turn prompts an especially proactive ‘juridical warfare’ that must be simultaneously pursued to legally capacitate, regulate and maximize any, and all, military operations. The 2005 National Defense Strategy underlined the challenge thus: ¶ Many of the current legal arrangements that govern overseas posture date from an earlier era. Today, challenges are more diverse and complex, our prospective contingencies are more widely dispersed, and our international partners are more numerous. International agreements relevant to our posture must reflect these circumstances and support greater operational flexibility.89 It went on to underline its consequent key juridical tactic and what I argue is a critical weapon in the US military-legal arsenal in the war on terror: the securing of ‘Status of Forces Agreements’ – 17 to “provide legal protections” against “transfers of U.S. personnel to the International Criminal Court”.90

#### Language like 'President of the united states' always already implies a legalistic framework - this dooms their solvency.

Schlag ‘90 (Pierre, professor of law at the University of Colorado, Stanford Law Review, lexis, AM)

In fact, normative legal thought is so much in a hurry that it will tell you what to do even though there is not the slightest chance that you might actually be in a position to do it. For instance, when was the last time you were in a position to put the difference principle n31 into effect, or to restructure [\*179] the doctrinal corpus of the first amendment? "In the future, we should. . . ." When was the last time you were in a position to rule whether judges should become pragmatists, efficiency purveyors, civic republicans, or Hercules surrogates? Normative legal thought doesn't seem overly concerned with such worldly questions about the character and the effectiveness of its own discourse. It just goes along and proposes, recommends, prescribes, solves, and resolves. Yet despite its obvious desire to have worldly effects, worldly consequences, normative legal thought remains seemingly unconcerned that for all practical purposes, its only consumers are legal academics and perhaps a few law students -- persons who are virtually never in a position to put any of its wonderful normative advice into effect.

#### Law is a Legal Cover for War

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(Thomas, *International Studies Quarterly* 46, The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence)

The role of military lawyers in all this has, according to one study, “changed irrevocably” ~Keeva, 1991:59!. Although liberal theorists point to the broad normative contours that law lends to international relations, the Pentagon wields law with technical precision. During the Gulf War and the Kosovo campaign, JAGs opined on the legal status of multinational forces, the U.S. War Powers Resolution, rules of engagement and targeting, country fly-overs, maritime interceptions, treatment of prisoners, hostages and “human shields,” and methods used to gather intelligence. Long before the bombing began, lawyers had joined in the development and acquisition of weapons systems, tactical planning, and troop training. In the Gulf War, the U.S. deployed approximately 430 military lawyers, the allies far fewer, leading to some amusing but perhaps apposite observations about the legalistic culture of America ~Garratt, 1993!. Many lawyers reviewed daily Air Tasking Orders as well as land tactics. Others found themselves on the ground and at the front. According to Colonel Rup- pert, the idea was to “put the lawyer as far forward as possible” ~Myrow, 1996–97!. During the Kosovo campaign, lawyers based at the Combined Allied Operations Center in Vicenza, Italy, and at NATO headquarters in Brussels approved every single targeting decision. We do not know precisely how decisions were taken in either Iraq or Kosovo or the extent to which the lawyers reined in their masters. Some “corrections and adjustments” to the target lists were made ~Shot- well, 1993:26!, but by all accounts the lawyers—and the law—were extremely accommodating.¶ The exigencies of war invite professional hazards as military lawyers seek to “find the law” and to determine their own responsibilities as legal counselors. A 1990 article in Military Law Review admonished judge advocates not to neglect their duty to point out breaches of the law, but not to become military ombuds- men either. The article acknowledged that the JAG faces pressure to demonstrate that he can be a “force multiplier” who can “show the tactical and political soundness of his interpretation of the law” ~Winter, 1990:8–9!. Some tension between law and necessity is inevitable, but over the past decade the focus has shifted visibly from restraining violence to legitimizing it. The Vietnam-era perception that law was a drag on operations has been replaced by a zealous “client culture” among judge advocates. Commanding officers “have come to realize that, as in the relationship of corporate counsel to CEO, the JAG’s role is not to create obstacles, but to find legal ways to achieve his client’s goals—even when those goals are to blow things up and kill people” ~Keeva, 1991:59!. Lt. Col. Tony Montgomery, the JAG who approved the bombing of the Belgrade television studios, said recently that “judges don’t lay down the law. We take guidance from our government on how much of the consequences they are willing to accept” ~The Guardian, 2001!.¶ Military necessity is undeterred. In a permissive legal atmosphere, hi-tech states can meet their goals and remain within the letter of the law. As noted, humanitarian law is firmest in areas of marginal military utility. When opera- tional demands intrude, however, even fundamental rules begin to erode. The Defense Department’s final report to Congress on the Gulf War ~DOD, 1992! found nothing in the principle of noncombatant immunity to curb necessity. Heartened by the knowledge that civilian discrimination is “one of the least codified portions” of the law of war ~p. 611!, the authors argued that “to the degree possible and consistent with allowable risk to aircraft and aircrews,” muni- tions and delivery systems were chosen to reduce collateral damage ~p. 612!. “An attacker must exercise reasonable precautions to minimize incidental or collat- eral injury to the civilian population or damage to civilian objects, consistent with mission accomplishments and allowable risk to the attacking forces” ~p. 615!. The report notes that planners targeted “specific military objects in populated areas which the law of war permits” and acknowledges the “commingling” of civilian and military objects, yet the authors maintain that “at no time were civilian areas as such attacked” ~p. 613!. The report carefully constructed a precedent for future conflicts in which human shields might be deployed, noting “the presence of civilians will not render a target immune from attack” ~p. 615!. The report insisted ~pp. 606–607! that Protocol I as well as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons “were not legally applicable” to the Gulf War because Iraq as well as some Coalition members had not ratified them. More to the point that law follows practice, the report claimed that certain provisions of Protocol I “are not a codification of the customary practice of nations,” and thus “ignore the realities of war” ~p. 616!.¶ Nor can there be any doubt that a more elaborate legal regime has kept pace with evolving strategy and technology. Michael Ignatieff details in Virtual War ~2000! how targets were “developed” in 72-hour cycles that involved collecting and reviewing aerial reconnaissance, gauging military necessity, and coding antici- pated collateral damage down to the directional spray of bomb debris. A judge advocate then vetted each target in light of the Geneva Conventions and calcu- lated whether or not the overall advantage to be gained outweighed any expected civilian spillover. Ignatieff argues ~2000:198–199! that this elaborate symbiosis of law and technology has given birth to a “veritable casuistry of war.” Legal fine print, hand-in-hand with new technology, replaced deeper deliberation about the use of violence in war. The law provided “harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality.” Astonishingly fine discrimination also meant that unintentional civilian casualties were assumed to have been unintentional, not foreseen tragedies to be justified under the rule of double effect or the fog of war. The crowning irony is that NATO went to such lengths to justify its targets and limit collateral damage, even as it assured long-term civilian harm by destroy- ing the country’s infrastructure.¶ Perhaps the most powerful justification was provided by law itself. War is often dressed up in patriotic abstractions—Periclean oratory, jingoistic newsreels, or heroic memorials. Bellum Americanum is cloaked in the stylized language of law. The DOD report is padded with references to treaty law, some of it obscure, that was “applicable” to the Gulf War, as if a surfeit of legal citation would convince skeptics of the propriety of the war. Instances of humane restraint invariably were presented as the rule of law in action. Thus the Allies did not gas Iraqi troops, torture POWs, or commit acts of perfidy. Most striking is the use of legal language to justify the erosion of noncombatant immunity. Hewing to the legal- isms of double effect, the Allies never intentionally targeted civilians as such. As noted, by codifying double effect the law artificially bifurcates intentions. Har- vard theologian Bryan Hehir ~1996:7! marveled at the Coalition’s legalistic word- play, noting that the “briefers out of Riyadh sounded like Jesuits as they sought to defend the policy from any charge of attempting to directly attack civilians.”¶ The Pentagon’s legal narrative is certainly detached from the carnage on the ground, but it also oversimplifies and even actively obscures the moral choices involved in aerial bombing. Lawyers and tacticians made very deliberate decisions about aircraft, flight altitudes, time of day, ordnance dropped, confidence in intelligence, and so forth. By expanding military necessity to encompass an extremely prudential reading of “force protection,” these choices were calculated to protect pilots and planes at the expense of civilians on the ground, departing from the just war tradition that combatants assume greater risks than civilians. While it is tempting to blame collateral damage on the fog of war, much of that uncertainty has been lifted by technology and precision law. Similarly, in Iraq and in Yugoslavia the focus was on “degrading” military capabilities, yet a loose view of dual use spelled the destruction of what were essentially social, economic, and political targets. Coalition and NATO officials were quick to apologize for accidental civilian casualties, but in hi-tech war most noncombatant suffering is by design.¶ Does the law of war reduce death and destruction? International law certainly has helped to delegitimize, and in rare cases effectively criminalize, direct attacks on civilians. But in general humanitarian law has mirrored wartime practice. On the ad bellum side, the erosion of right authority and just cause has eased the path toward war. Today, foreign offices rarely even bother with formal declara- tions of war. Under the United Nations system it is the responsibility of the Security Council to denounce illegal war, but for a number of reasons its mem- bers have been extremely reluctant to brand states as aggressors. If the law were less accommodating, greater effort might be devoted to diplomacy and war might be averted. On the in bello side the ban on direct civilian strikes remains intact, but double effect and military demands have been contrived to justify unnecessary civilian deaths. Dual use law has been stretched to sanction new forms of violence against civilians. Though not as spectacular as the obliteration bombing to which it so often is favorably compared, infrastructural war is far deadlier than the rhetoric of a “clean and legal” conflict suggests. It is true that rough estimates of the ratio of bomb tonnage to civilian deaths in air attacks show remarkable reductions in immediate collateral damage. There were some 40.83 deaths per ton in the bombing of Guernica in 1937 and 50.33 deaths per ton in the bombing of Tokyo in 1945. In the Kosovo campaign, by contrast, there were between .077 and .084 deaths per ton. In Iraq there were a mere .034 ~Thomas, 2001:169!. According to the classical definition of collateral damage, civilian protection has improved dramatically, but if one takes into account the staggering long-term effects of the war in Iraq, for example, aerial bombing looks anything but humane.¶ For aerial bombers themselves modern war does live up to its clean and legal image. While war and intervention have few steadfast constituents, the myth of immaculate warfare has eased fears that intervening soldiers may come to harm, which polls in the U.S., at least, rank as being of great public concern, and even greater military concern. A new survey of U.S. civilian and military attitudes found that soldiers were two to four times more casualty-averse than civilians thought they should be ~Feaver and Kohn, 2001!. By removing what is perhaps the greatest restraint on the use of force—the possibility of soldiers dying—law and technology have given rise to the novel moral hazards of a “postmodern, risk-free, painless war” ~Woollacott, 1999!. “We’ve come to expect the immacu- late,” notes Martin Cook, who teaches ethics at the U.S. Army War College in Carlisle, PA. “Precision-guided munitions make it very much easier to go to war than it ever has been historically.” Albert Pierce, director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy argues, “standoff precision weapons give you the option to lower costs and risks . . . but you might be tempted to do things that you might otherwise not do” ~Belsie, 1999!.¶ Conclusion¶ The utility of law to legitimize modern warfare should not be underestimated. Even in the midst of war, legal arguments retain an aura of legitimacy that is missing in “political” justifications. The aspirations of humanitarian law are sound. Rather, it is the instrumental use of law that has oiled the skids of hi-tech violence. Not only does the law defer to military necessity, even when very broadly defined, but more importantly it bestows on those same military demands all the moral and psychological trappings of legality. The result has been to legalize and thus to justify in the public mind “inhumane military methods and their consequences,” as violence against civilians is carried out “behind the protective veil of justice” ~af Jochnick and Normand, 1994a:50!. Hi-tech states can defend hugely destructive, essentially unopposed, aerial bombardment by citing the authority of seemingly secular and universal legal standards. The growing gap between hi- and low-tech means may exacerbate inequalities in moral capital as well, as the sheer barbarism of “premodern” violence committed by ethnic cleansers or atavistic warlords makes the methods employed by hi-tech warriors seem all the more clean and legal by contrast.¶ This fusion of law and technology is likely to propel future American interventions. Despite assurances that the campaign against terrorism would differ from past conflicts, the allied air war in Afghanistan, marked by record numbers of unmanned drones and bomber flights at up to 35,000 feet, or nearly 7 miles aloft, rarely strayed from the hi-tech and legalistic script. While the attack on the World Trade Center confirmed a thousand times over the illegality and inhu- manity of terrorism, the U.S. response has raised further issues of legality and inhumanity in conventional warfare. Civilian deaths in the campaign have been substantial because “military objects” have been targeted on the basis of extremely low-confidence intelligence. In several cases targets appear to have been chosen based on misinformation and even rank rumor. A liberal reading of dual use and the authorization of bombers to strike unvetted “targets of opportunity” also increased collateral damage. Although 10,000 of the 18,000 bombs, missiles, and other ordnance used in Afghanistan were precision-guided munitions, the war resulted in roughly 1000 to 4000 direct civilian deaths, and, according to the UNHCR, produced 900,000 new refugees and displaced persons. The Pentagon has nevertheless viewed the campaign as “a more antiseptic air war even than the one waged in Kosovo” ~Dao, 2001!. General Tommy Franks, who commanded the campaign, called it “the most accurate war ever fought in this nation’s history” ~Schmitt, 2002!.9¶ No fundamental change is in sight. Governments continue to justify collateral damage by citing the marvels of technology and the authority of international law. One does see a widening rift between governments and independent human rights and humanitarian relief groups over the interpretation of targeting and dual-use law. But these disputes have only underscored the ambiguities of human- itarian law. As long as interventionist states dominate the way that the rules of war are crafted and construed, hopes of rescuing law from politics will be dim indeed.

#### Juridical logic must be completely abandoned—a completely new analytics of power must be constructed in its place

Minkkinen 97. Panu Minkkinen, faculty of law at the University of Helsinki, “The Juridical Matrix,” Social & Legal Studies 1997 6: pg. 434

The other set of questions refers to the ’founding’ relation of social, non-discursive practices in relation to discursive practices. How can one account for Foucault’s obstinacy in explaining this relation with juridical and quasijuridical terminology? How should one integrate theoretically the regulative logic of, for example, the rules of formation (Foucault, 1969: 53) to Foucault’s later position on refuting the repressive hypothesis according to which a juridical logic must be abandoned altogether: ’This image we must break free of, namely, of the theoretical privilege of law and sovereignty, if we wish to analyse the concrete and historical development of the methods of power. A power-analytics must be constructed that no longer follows law as a model and a code’ (1976: 118-19). The question, then, concerns the juridical nature of the internal logic of Foucault’s theory. The central position of power in Foucault’s later work cannot account for this logic. But in the introduction of Surveiller et punir, Foucault clarifies one aim of the research by referring to matrices: Instead of treating the histories of penal law and the human sciences as two separate series whose overlapping would have had, depending on one’s perspective, either a damaging or a useful effect on one or the other - or perhaps on both - we should look into the possibility of a common matrix or that they both derive from a ’juridico-epistemological’ process of formation. (1975: 28) In other words, discursive practices such as penal law and the human sciences share a matrix that, in turn, is inferred from social practices such as the prison. Later Foucault (1975: 186-94) does take up the matrix of examination (examen), a ritual connected to the formation of knowledge that enables the singularization and the objectification required by disciplinary power. The essential components of the examination are the moving of the domain of visibility from its source to its objects; the development of detailed and observable characteristics suitable for documentation; and, lastly, with the help of the developed symptomatology, the possibility of singularizing the visible object of power: ’the examination is at the centre of the procedures that constitute the subject as effect and object of both power and knowledge’ (p. 194). In La volonté de savoir, Foucault differentiates the objective effect of the examination from the subjective effect of the confession (aveu). In the confession, the speaking subject and the subject of speech become one in a juridico-religious ritual in which ’truth is authenticated by the obstacles and resistances it has had to overcome in order to be formulated’ (1976: 83). The matrix is not a social practice as such but a structural reduction thereof - of juridical practices, medical practices, religious practices and so on (cf. 1994b: 316-18). Through the procedures, the matrix uniting different social practices effects the discursive field. Although the relation between the discursive and the non-discursive is disjunctive, the effect is formative. In Surveiller et punir, Foucault mentions briefly two other juridico-political matrices that are connected to the formation of knowledge: It is, perhaps, true that, in Greece, the mathematical sciences were born from the techniques of the measure [mesure], but towards the end of the Middle Ages, the practices of the investigation [enquete] at least partly contributed to the birth of the natural sciences. (1975: 227; cf. 1976: 78-80) In other, less well-known texts, Foucault takes up the matrices in more detail. This is one of the most important law-related aspects of Foucault’s work from the 1970s. One of the aims of his morphological project is to write, with the help of the matrices, a history of power. The matrices uniting social practices account for the formative effect of the non-discursive vis-a-vis the discursive. The epochal periodization of Foucault’s history can be structured as a succession of matrices derived from, for the most part, juridical practices: the time preceding Greek democracy and the trial (6preuve); the polis and the measure; the Middle Ages and the investigation; and, finally, the examination and the confession of modernity discussed in detail in Surveiller et punir and La volonté de savoir respectively. The individual practices, in turn, are responsible for the production of truth in power-knowledge relations. ’Law’, which the epochal variations account for the history of power-knowledge in Occidental civilization.